

Chapter I

Executive Summary

A. Introduction to the Blue Ribbon Commission

The Judicial Council of California (the “Council”), the policy-making body for California’s courts, created this Blue Ribbon Commission (the “Commission”) to conduct a comprehensive evaluation of the jury system and to make timely recommendations for improvement. The Commission is made up of 26 members and is broadly representative of the diverse groups who regularly work with the courts and juries. The membership includes judges from municipal, superior and appellate courts, court administrators, legislators from the Assembly and Senate, a representative from the Governor’s office, a district attorney, defense counsel, civil practitioners, and public members. The chair of the Commission is Judge Roy Wonder (Ret.) of the San Francisco Superior Court, and the vice-chair is Judge Charles B. Renfrew (Ret.) of the United States District Court for the Northern District of California.

The Commission was formed by the Council in December of 1995, and the State Bar of California and the California Judges Association agreed to participate as supporting sponsors. The Commission held its first meetings in January of 1996. The Commission divided its work over three subcommittees: Juror Pool, Treatment and Management, chaired by Mr. Michael Roddy, executive officer of the Superior and Municipal Courts of Sacramento County; Jury Selection and Trial Structure, chaired by Justice Patricia Bamattre-Manoukian of the Court of Appeal for the Sixth Appellate District; and Jury Functioning, chaired by Judge Judith McConnell of the San Diego County Superior Court. These three subcommittees met frequently in February, March and April to work through the long list of issues for consideration. Mr. Tom Munsterman of the National Center for State Courts, one of the country’s leading authorities on juries, attended all meetings and significantly contributed to the Commission’s discussions. Professor J. Clark Kelso of the University of the Pacific’s McGeorge School of Law served as reporter for the Commission’s deliberations and primary author of this Report.

Two full days of public hearings were conducted in March in Los Angeles and San Francisco. The Commission also received written comments and reports from several interested persons. Quotes from these sources are

interspersed throughout this report.

A draft of this Report was presented to the full Commission for its consideration in late March and again in late April for final approval. The Report was then submitted to the Council at its May meeting in Chico. A minority report dissenting in part appears in Appendix P.

The Commission commends the Council, the Legislature and the Governor for cooperatively supporting the Commission's work. Recognizing that many of the issues considered by the Commission would involve legislative action, Chief Justice Malcolm M. Lucas, chairperson of the Council, invited the participation of the chairs of the Assembly and Senate Judiciary Committees, the Assembly Public Safety Committee, the Senate Criminal Procedure Committee, and a representative from the Governor's office. Their participation has enriched the Commission's deliberations and has helped to ensure that the Commission's conclusions will receive full consideration in the legislative process.

B. Summary of Recommendations

The Commission considered hundreds of suggestions in crafting its recommendations. Some of the recommendations will command near universal assent. Others are going to create discomfort among one or more groups. Those who are involved with the jury system—jurors, judges, jury commissioners, attorneys, and California businesses—will be asked to make individual sacrifices that will redound to the benefit of all. The Commission's intent is to push for those changes that are necessary to preserve and improve the system.

Recommendation 1.1: In view of the fundamental importance of the jury system to public respect for the rule of law, the Judicial Council, the Legislature, the Governor, and the State Bar should seriously consider and support changes recommended by this Commission that are necessary to preserve, promote and improve the jury system.

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The Commission attempted in its deliberations to reach consensus on all issues. In many cases, a consensus was possible. On some issues (e.g., jury size, the number of peremptory challenges, and the requirement of unanimity), consensus was not possible. In these cases, the Commission adopted recommendations by majority vote (usually conducted by a show of hands of those present). This report clearly identifies those issues where consensus was not achieved, presents both the majority and minority arguments, and indicates the results of the votes taken by the Commission.

The specific recommendations adopted by the Commission are as follows:

1. Support for Commission Recommendations

Recommendation 1.1: In view of the fundamental importance of the jury system to public respect for the rule of law, the Judicial Council, the Legislature, the Governor, and the State Bar should seriously consider and support changes recommended by this Commission that are necessary to preserve, promote and improve the jury system.

2. Implementation of Recommendations and Continuing Oversight

Recommendation 2.1: The Judicial Council should create an Implementation Task Force on Jury System Improvements which would be responsible for overseeing implementation of the Commission's recommendations. Like the membership of the Commission, the Task Force's membership should be broadly representative of the diverse perspectives about the jury system.

3. The Jury Pool, Jury Treatment and Jury Management

Recommendation 3.1: The Judicial Council should adopt a Standard of Judicial Administration recommending use of the National Change of Address system to update jury source lists.

Recommendation 3.2: The Implementation Task Force should evaluate the results of an existing New York program to supplement its jury source lists with

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welfare and unemployment lists and should then consider whether one or more California counties should conduct a pilot project supplementing the DMV and registered voters lists with other comprehensive lists of persons living in California.

Recommendation 3.3: The Judicial Council's Advisory Committee on Court Technology, in consultation with the Implementation Task Force, should review the cost, feasibility and efficacy of a statewide master jury list.

Recommendation 3.4: The Legislature should enact a statute clearly stating that jury service is a mandatory duty of all qualified citizens.

Recommendation 3.5: The Legislature should amend C.C.P. § 209 and Vehicle Code § 12805 to provide mandatory procedures for enforcing juror summons, including placing a hold upon driver's license renewals of those persons who fail to respond to a juror summons.

Recommendation 3.6: The Implementation Task Force should produce a format for a standardized jury summons for use, with appropriate modifications, around the State which is understandable and has consumer appeal.

Recommendation 3.7: Jury commissioners should, if feasible, adopt a one-step summons process (i.e., combined juror questionnaire and summons) to replace the two-step process (i.e., juror questionnaire followed by summons).

Recommendation 3.8: Jury commissioners and judges should actively promote the importance of the jury system and the duty to serve through all available channels of communication.

Recommendation 3.9: The Judicial Council should enact a Rule of Court to require jury commissioners to apply the standards regarding hardship excuses presently set forth in Section 4.5 of the Standards of Judicial Administration.

Recommendation 3.10: The Legislature should enact a child-care program for those jurors who must make special child-care arrangements as a result of jury service.

Recommendation 3.11: The Judicial Council should adopt a Rule of Court providing for mandatory judicial, court administrator, and jury staff team-training on juror treatment.

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Recommendation 3.12: The Judicial Council should adopt a Rule of Court requiring jury commissioners to prepare a juror handbook which sets forth the juror's rights and responsibilities and explains juror services within the courthouse.

Recommendation 3.13: The Judicial Council should adopt a Rule of Court requiring the creation within each court of some reasonable mechanism for responding to juror complaints.

Recommendation 3.14: To reduce the burden of long-distance driving and to reduce parking problems, the Legislature should consider the propriety of measures requiring mass transit providers to offer free public transportation to and from courthouses for jurors.

Recommendation 3.15: The Legislature should amend C.C.P. § 215 to require courts to reimburse jurors for all reasonable and necessary parking expenses or to provide free parking consistent with local building and transportation policies.

Recommendation 3.16: Trial courts should review existing jury facilities in light of national standards and, at a minimum, should take whatever steps are necessary to bring all jury facilities up to those standards.

Recommendation 3.17: The presiding judge of the court should ensure that juror security within the courthouse and from juror parking facilities to the courthouse is properly coordinated and supervised by the court security officer.

Recommendation 3.18 (by a vote of 16 to 2): The Legislature should enact legislation providing that jurors will be identified throughout the jury selection process only by number and not by name, and that personal juror identifying information shall not be elicited during voir dire except on a showing of a compelling need.

Recommendation 3.19: The Legislature should enact a statute giving jurors the right to respond in chambers to questions during voir dire that elicit highly personal information and requiring that the court inform jurors of this right.

Recommendation 3.20: The Legislature should amend C.C.P. § 237 to ensure that personal juror identifying information is properly safeguarded in the context of post-verdict proceedings.

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Recommendation 3.21: The Judicial Council should adopt a Rule of Court requiring by January 1998 adoption of a one trial - one day service requirement except in those counties which can demonstrate good cause why such a requirement is impractical.

Recommendation 3.22: The Judicial Council should adopt a Rule of Court requiring by January 1998 implementation of an "on-call" telephone stand-by system in every county except in those counties which can demonstrate good cause why such a system is impractical.

Recommendation 3.23: Presiding judges should discuss the topic of case predictability and late settlements with participants in the criminal justice system in meetings required by Rule of Court 227.8.

Recommendation 3.24: The Legislature should amend C.C.P. § 204 to provide that an eligible person shall be excused from service for a minimum of twelve months if he or she has completed jury service.

Recommendation 3.25: The Legislature should amend C.C.P. § 215 to provide for juror fees of \$40 per day for each day of jury service after the first day and \$50 per day for each day of jury service after the thirtieth day, and to provide for reimbursement to jurors at the rate of \$0.28 per mile for travel to and from the court.

Recommendation 3.26: The Legislature should amend Section 230 of the Labor Code to require all employers to continue paying usual compensation and benefits to employees for the first three days of jury service if the employee has given reasonable notice to the employer of the service requirement.

Recommendation 3.27: The Legislature should adopt reasonable tax credits for those employers who voluntarily continue paying usual compensation and benefits to employees who are absent from work for more than three days on account of jury service.

Recommendation 3.28: The Legislature should amend the Unemployment Insurance Code to provide that, except for the first day, jury service constitutes an employment disability which entitles the employee to a claim in the amount of \$40 per day (increased to \$50 per day after the 30th day of service).

Recommendation 3.29: The Trial Court Presiding Judges Advisory Committee

and Court Administrators Advisory Committee should systematically monitor and study critical components of the jury system for the purpose of permitting more informed policy-making and management.

4. Jury Selection and Structure of the Trial Jury

Recommendation 4.1: The Judicial Council should amend Section 8.8 of the Standards of Judicial Administration to encourage the Center for Judicial Education and Research (“CJER”) to produce educational materials and programs focused on the conduct of voir dire, particularly in criminal cases, that can be distributed to all judges for use and review.

Recommendation 4.2: The Judicial Council should amend Section 8.7 of the Standards of Judicial Administration to include a list of factors judges should consider when making the “good cause” determination under C.C.P. § 223.

Recommendation 4.3: Rules of Court 228.2 & 516.2, which give the trial court discretion to determine the appropriate method of supplementing the court’s voir dire, should not be changed.

Recommendation 4.4: The Judicial Council should adopt a Standard of Judicial Administration encouraging the use of a statewide juror questionnaire to be developed by the Implementation Task Force to gather basic juror information, other than juror identification information, for use by the court and counsel in voir dire.

Recommendation 4.5: A reasonable and equal number of peremptory challenges must be given to each side in criminal and civil cases, and the trial court should be given discretion to increase the number of peremptory challenges for good cause in the interests of justice.

Recommendation 4.6 (by a series of majority votes): The Legislature should amend C.C.P. § 231 to provide each side with 12 peremptory challenges in cases where the offense charged is punishable with death or with life imprisonment, 6 peremptory challenges in all other felonies, and 3 peremptory challenges in all misdemeanors. (The votes are reported below in the text.)

Recommendation 4.7: There should be a proportional reduction in the number

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of additional peremptory challenges given for multi-defendant cases.

Recommendation 4.8 (by a series of votes): The Legislature should amend C.C.P. § 231(c) to provide each party in a 2-party civil action with 3 peremptory challenges, and each side in all other civil actions with 6 peremptory challenges. (The votes are reported below in the text.)

Recommendation 4.9: In capital cases and felonies, the jury should consist of 12 persons.

Recommendation 4.10 (by a vote of 14 to 7): The Legislature should propose an amendment to the California Constitution, Article I, § 16, to provide for a jury of 8 persons in all misdemeanor cases or a lesser number agreed on by the parties.

Recommendation 4.11 (by a vote of 19 to 2): The Legislature should eliminate juries from those misdemeanors that do not carry any possible jail time.

Recommendation 4.12 (by a vote of 13 to 5): In civil cases within the jurisdiction of the superior court, the jury should consist of 12 persons or a lesser number agreed on by the parties.

Recommendation 4.13 (by a vote of 15 to 6): The Legislature should amend C.C.P. § 220 to provide that in civil cases within the jurisdiction of the municipal court, the jury should consist of 8 persons or a lesser number agreed on by the parties.

Recommendation 4.14: The Commission recommends that the Judicial Council conduct a short (e.g., 4-6 month), focused study to gather more reliable information regarding: (1) the percentage of hung juries and the vote split; (2) the reasons why individual juries are unable to reach a verdict (data that could be collected from a form to be filled out by the jury foreperson); and (3) the subsequent history of cases resulting in hung juries (e.g., number of cases retried with the results, number of cases pled, number of cases dropped). Data can be collected from court records and from files within the offices of county prosecutors and public defenders.

Recommendation 4.15: A unanimous verdict should continue to be required for criminal cases in which the punishment is death or life imprisonment.

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Recommendation 4.16 (by a vote of 13 to 4): If the jury size in misdemeanor cases is reduced from 12 to 8 (as provided for in Recommendation 4.10), then unanimous verdicts should be required.

Recommendation 4.17 (by a vote of 20 to 1): After a jury reports it is deadlocked, the trial judge should reemphasize to the jury the importance of arriving at a verdict and each juror's duty to deliberate. The trial judge should also explain that the foreperson should report to the judge if any juror is refusing to participate in deliberations or has a bias not disclosed in voir dire.

Recommendation 4.18 (by a vote of 15 to 7): The Legislature should propose a constitutional amendment which provides that, except for good cause when the interests of justice require a unanimous verdict, trial judges shall accept an 11-1 verdict after the jury has deliberated for a reasonable period of time not less than 6 hours in all felonies, except where the punishment may be death or life imprisonment, and in all misdemeanors where the jury consists of 12 persons.

5. The Jury's Deliberative Function

Recommendation 5.1: The Implementation Task Force should produce a professional quality, statewide juror orientation videotape which can be used by jury commissioners, with or without modification, to satisfy the statutory obligation to provide juror orientation.

Recommendation 5.2: The Judicial Council should adopt a Rule of Court which requires the trial court to inform jurors of their right to take written notes and which gives the trial judge discretion to determine the post-verdict disposition of juror notes.

Recommendation 5.3: The Judicial Council should adopt a Standard of Judicial Administration recommending that judges permit jurors to submit written questions to the court which, subject to the discretion of the trial judge and the rules of evidence, may be asked of witnesses who are still on the stand. The Standard should include a pre-trial admonition explaining the procedure to jurors.

Recommendation 5.4: The Judicial Council should reconsider in January 1998

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the issue of pre-deliberation discussions by jurors based on a review of the experience in Arizona. In the meantime, the Council should adopt a Standard of Judicial Administration that encourages trial judges to experiment in long civil trials with scheduled pre-deliberation discussions upon stipulation of counsel with appropriate admonitions regarding withholding judgment until deliberations have begun.

Recommendation 5.5: The Judicial Council should oppose legislation that would permit or require trial judges to inform the jury of its power of nullification.

Recommendation 5.6: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges, in their discretion, pre-instruct the jury on the substantive law of issues involved in the case.

Recommendation 5.7: The Judicial Council should adopt a Standard of Judicial Administration that encourages counsel in cases involving highly complex subject matters jointly to develop a glossary of common terms which can be distributed to each juror at the beginning of trial.

Recommendation 5.8: The Judicial Council should appoint a Task Force on Jury Instructions to be charged with the responsibility of drafting jury instructions that accurately state the law using language that will be understandable to jurors. Proposed instructions should be submitted to the Judicial Council and the California Supreme Court for approval. The membership of the Task Force on Jury Instructions should be diverse, including judges, lawyers, representatives from the Committee on Standard Jury Instructions of the Superior Court of Los Angeles, linguists, communications experts, and other non-lawyers. The Task Force should be charged with completing its work no later than 18 months after its formation.

Recommendation 5.9: As part of final jury instructions, trial judges should suggest specific procedures for how to conduct the deliberations process.

Recommendation 5.10 (by a vote of 12 to 6): The Legislature should amend C.C.P. § 234 to give the trial judge discretion in civil cases to permit alternate jurors to observe but not participate in jury deliberations.

Recommendation 5.11: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges actively manage trial proceedings with particular emphasis upon the needs of the jury. CJER should continue its

